

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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MINNESOTA STATUTES 1891

CHAPTER 57 (G. S. ch. 41).

FRAUDS, ASSIGNMENTS.

TITLE 1. STATUTE OF FRAUDS.

2. FRAUDULENT CONVEYANCES AGAINST PURCHASERS.
3. FRAUDULENT CONVEYANCES AGAINST CREDITORS.
4. VOLUNTARY ASSIGNMENTS FOR CREDITORS.
5. INSOLVENT ASSIGNMENT FOR CREDITORS.

The statute of frauds is from 29 Car. II. ch. 3, §§ 14 and 17, A. D. 1676. The statutes against fraudulent conveyances are from 13 Eliz. ch. 5, A. D. 1571; for protection of creditors, and 27 Eliz. ch. 4, A. D. 1585, for protection of purchasers. The assignment law is acts 1876, ch. 44, as amended, and the insolvent law is acts 1881, ch. 148, as amended.

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TITLE 1.

STATUTE OF FRAUDS.

The statute of frauds, 29 Car. II. ch. 3, A. D. 1676, originated with Lord Nottingham, and for its history see *Ash v. Abdy*, 3 Swanst. 664. The provisions in this title contain the fourth and seventeenth sections of that statute, except the provision to charge a personal representative upon a promise to answer any debt or damage out of his own estate. The provisions in Lord Tenterden's act, 9 Geo. IV. ch. 14, §§ 5, 6, that to charge any person for a representation or assurance of another's character, conduct, credit, ability, trade or dealings, to enable such other to obtain credit, money or goods, or to charge any person upon a promise made after full age to pay a debt contracted during infancy, or ratification after full age of a promise or simple contract made during infancy, were not adopted in this state.

SEC. 4226. Contracts to be in writing.— No action shall be maintained, in either of the following cases, upon any agreement, unless such agreement, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party charged therewith:

First. Every agreement that by its terms is not to be performed within one year from the making thereof;

Second. Every special promise to answer for the debt, default or doings of another;

Third. Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promise to marry.

G. S. ch. 41, § 6. Same as § 2, ch. 63, R. S. and § 2, ch. 50, C. S. 1 M. 301; 5 M. 455; 14 M. 194, 265; 16 M. 68; 20 M. 40; 22 M. 283, 449; 23 M. 6, 542; 34 M. 308; 34 M. 511; 39 N. W. 147, 303.

This is part of § 4, ch. 3, 29 Car. II. Passed A. D. 1676. A provision in that law that to charge a personal representative upon a promise to answer any debt or damages out of his own estate, it must be in writing, appears not to have been adopted in Minnesota.

The first sentence in R. S. and C. S. reads: "In the following cases every agreement shall be void unless such agreement." This language was changed by the revisors in 1863 to read: "No action shall be maintained in either of the following cases upon any agreement, unless such agreement;" and as thus changed was adopted in G. S. 1866, and means the same, namely, that "no action shall be maintained upon any agreement in either of the following cases, unless such agreement." It does not mean that every agreement shall be in writing, but that the cases named shall be in writing, because this is the meaning of 29 Car. II. ch. 3, § 4, and all the state statutes framed from it.

"Expressing the consideration." This places the law as it stood under 29 Car. II. ch. 3, § 4, and the rule as laid down in *Wain v. Walters*, 2 Smith L. Cas. 147; 5 East, 10, which was abolished in England by 19 and 20 Vict. ch. 97, and in most of United States. The rule in *Wain v. Walters* was doubted in 14 Ves. Jr. 190; 15 Ves. Jr. 287, and sanctioned in 5 Barn. & Ald. 595. The conflict is reviewed in 17 Mass. 122.

Subscribed by the party charged therewith, prohibits the signing by or through an agent, which is allowed in real estate contracts and as to chattels in many of the states, and excludes the learning on the question that the name could appear in any part of the writing, because the name must be subscribed, the old law using the word "signed." 18 Ves. Jr. 175; 3 Meriv. 62; 1 Cox, C. Eq. 223; 1 R. & My. 625; 2 M. & W. 653; 7 Exch. 862; 1 Sug. Vend. 54; 1 Camp. 513; 2 M. & S. 286; 2 B. & P. 238; 3 Esp. 180; 6 East, 307; 14 Johns. 484; 13 Mass. 87; 2 Pars. Cont. 292; 1 Sch. & Lefr. 31; 9 Ves. Jr. 250.

Not to be performed within a year, means when this appears from the agreement itself or necessarily implied therefrom (11 East, 142; 1 Greenlf. Ev. § 263; 1 Pars. Cont. 92); and not to be carried into full, complete and effective execution within the year. 1 Smith, L. Cas. 142; Chit. Cont. 67; 2 Pars. Cont. 316.

Special promise to answer for the debt, default or doings of another, means same as language in 29 Car. II. ch. 3, § 4, "to charge any person upon a promise to answer for the debt, default or misdoings of another," and embraces the learning of liability for collateral promises, except that which falls under 9 Geo. IV. ch. 14, § 6,—to answer for the character, conduct, credibility, trade, or dealings of another; which has not been adopted in this state (Smith, Mer. Law, 438; 2 Steph. Com. 103; 1 Smith, L. Cas. 133; 2 Smith, L. Cas. 147; 1 Hen. Bl. 120; 2 Pars. Cont. 309; 2 B. & A. 613; 11 A. & E. 438; 1 Pars. Cont. 497; 18 Pick. 369; 8 Johns. 376); the question in such cases being to whom was credit given. Smith, Mer. Law, 443; 5 Hill, 483; 1 Gill, 260; Sto. Cont. § 130.

Made upon consideration of marriage includes all promises in the nature of marriage settlements, advancements or provisions in view of marriage (12 Ves. 67; 1 Ves. Jr. 196); not promises to marry, even if not mutual. 1 Bland, 287; 1 Sto. 34. Any writing will do. Even a letter sufficient (1 Vern. 110; 2 Vern. 200; 5 Vin. 522); and if receded from, parol can establish. 2 P. Wms. 65; 2 Vern. 201. And parol before, will support written agreement after marriage. 13 Ves. Jr. 74; 1 Swanst. 106; 3 Johns. Ch. 481.

SEC. 4227. Contracts for sale of goods.—Every contract for the sale of any goods, chattels or things in action, for the price of fifty dollars or more, shall be void, unless,

First. A note or memorandum of such contract is made, in writing, and subscribed by the parties to be charged therewith; or,

Second. Unless the buyer accepts and receives part of such goods, or the evidences, or some of them, of such things in action; or,

Third. Unless the buyer, at the time, pays some part of the purchase-money.

G. S. ch. 41, § 7. 3 M. 109; 13 M. 191; 14 M. 127; 15 M. 440; 21 M. 402. This is § 17, ch. 3, 29 Car. II., as explained by Lord Tenterden's act, 9 Geo. IV. ch. 14, § 7, which provided that to make a contract for the sale of goods valid, the buyer shall accept and receive in whole or in part the thing sold, or give something in earnest to bind the bargain or in part payment, or that some note or memorandum of the bargain be made and signed by the parties or their agents. 1 East, 194; 7 Leigh, 566. Few states adopted this, because of the belief that it hindered traffic.

SEC. 4228. Auctioneer's memorandum.—Whenever goods are sold at public auction, and the auctioneer, at the time of sale, enters into a sale-book a memorandum specifying the nature and price of the property sold, the terms of the sale, name of the purchaser, and the name of the person on

whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

G. S. ch. 41, § 8. This is the rule with respect to sales of real estate. 12 Ves. Jr. 466; 15 Ves. Jr. 515.

SEC. 4229. **Existing trusts.**—Every grant or assignment of any existing trust in goods or things in action, unless the same is in writing, subscribed by the party making the same, or by his agent lawfully authorized, shall be void.

G. S. ch. 41, § 9. 23 M. 55. Same as R. S. ch. 64, § 2. The protection afforded by statutes from the 13 Eliz. ch. 5, and statute of Anne, for trusts in chattels, was that such writing would be void as to creditors and subsequent purchasers unless duly admitted to record. 2 Wh. & Tud. L. Cas. 110; 2 Lomax, Dig. 484, 492.

SEC. 4230. **Conveyance of land to be in writing.**—No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the parties creating, granting, assigning, surrendering or declaring the same, or by their lawful agent thereunto authorized by writing.

G. S. ch. 41, § 10. Same as R. S. ch. 62, § 6. 2 M. 277; 4 M. 141; 6 M. 250; 6 M. 358; 34 M. 273; 31 M. 432; 30 M. 516; 26 M. 135; 25 M. 118; 24 M. 173. This is substantially § 7, ch. 3, 29 Car. II., and the object is to exclude all parol evidence in land contracts. 27 E. C. L. 33; 5 B. & A. 58; 2 Atk. 383; 6 East, 602; 11 East, 362; 2 M. & S. 205. But this does not inhibit contracts not within the statute, such as parol agreements partly performed. 1 Wh. & T. L. Cas. 557; 1 Johns. Ch. 273; 1 Sch. & Lefr. 22; 19 Ves. Jr. 479. Formerly a deposit, security or payment of purchase money, or a part, was part performance. 2 Vern. 618; 1 Ves. 82; 4 Ves. 720; 3 Atk. 4. But this was overruled. 1 Sch. & Lefr. 40, 129; 6 Wheat. 153; 4 Blackf. 94.

SEC. 4231. **Same—Limitation.**—The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament; nor to prevent any trust from arising or being extinguished by implication or operation of law.

G. S. ch. 41, § 11. Same as R. S. ch. 62, § 7.

SEC. 4232. **Contracts for leasing and for sale of realty.**—Every contract for the leasing for a longer period than one year, or for the sale, of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party by whom the lease or sale is to be made,* or by his lawful agent thereunto authorized in writing, and no such contract when made by such agent shall be entitled to record, unless the authority of such agent be also recorded.

G. S. ch. 41, § 12, as amended 1887, ch. 26. Approved March 7th. Amendment struck out "or by his authorized agent" and inserted matter below *. Same as R. S. ch. 62, §§ 8, 9. 8 M. 524; 10 M. 207; 14 M. 72; 16 M. 172; 20 M. 178; 21 M. 409, 538; 31 M. 313; 25 M. 118; 39 M. 495.

SEC. 4233. **Part performance.**—Nothing in this chapter contained shall be construed to abridge the power of courts of equity to compel the specific performance of agreements, in cases of part-performance of such agreements.

G. S. ch. 41, § 13. Same as R. S. ch. 62, § 10. 13 M. 462; 14 M. 72; 20 M. 219; 23 M. 343. Parol agreements partly performed were always enforceable in equity, for the learning of which see 1 Wh. & T. L. Cas. 557; 1 Johns. Ch. 273; 2 Sto. Eq. Jur. §§ 759-767; 6 Wheat. 528; 9 Pet. 36; 5 Wend. 638. Formerly payment of purchase money was part performance. 2 Vern. 618; 4 Ves. 720. But overruled in 1 Sch. & Lefr. 40, 129; 6 Wheat. 153.

TITLE 2.

CONVEYANCES OF LANDS FRAUDULENT AS AGAINST PURCHASERS.

This title is from 27 Eliz. ch. 4, A. D. 1585, intended to protect subsequent purchasers of land, and was copied from the civil law. Dig. 5, 8, 11, 42; 2 Bell's Com. 182; 1 Am. L. Cas. 68; 8 Wheat. 229.

SEC. 4234. Conveyances to defraud purchasers.— Every conveyance of any estate or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers, for a valuable consideration, of the same lands, rents, or profits, as against any such purchasers, shall be void.

G. S. ch. 41, § 1. 2 M. 264, 291; 3 M. 389; 36 M. 305. This is the provision in 27 Eliz. ch. 4, A. D. 1585, enacted to protect *purchasers in realty only*. The 13 Eliz. ch. 5, A. D. 1571, protected existing and subsequent *creditors*, and included lands and chattels. In this statute the pivot is "the intent to defraud," not "to delay, hinder or defraud," as in the 13 Eliz. ch. 5. For the law before 27 Eliz. ch. 4, see 1 Cro. 445; 2 Lomax, Dig. 452. The purchasers protected by this statute are *bona fide* purchasers for value without notice, whether from grantor or grantee (Twyne's Case, 3 Co. 83; 2 Lomax, Dig. 458; 3 Johns. Ch. 371; 18 Johns. 515, 524; 2 Mason, 252; 6 Cranch, 133), and not purchasers where purchase fraudulent in its inception (Burrell's Case, 6 Co. 92); even without notice (Gooch's Case, 5 Co. 60; 9 East, 59; 1 Story, Eq. Jur. § 381), or with fraudulent design in grantor and notice thereof by grantee (4 Wend. 100; 7 Pet. 348); nor with notice of prior fraudulent conveyance (1 Am. L. Cas. 77; 1 Story, Eq. Jur. § 426; 2 Ves. Sr. 10; 1 Madd. R. 414; 4 Wash. C. C. 129; 5 Pet. 264; 5 Wend. 661), or prior voluntary conveyance. 1 Story, Eq. § 430; 5 Pet. 264, 280. Vendee at judicial sale under assignment for creditors is not a purchaser (2 Lomax, Dig. 458; 11 Wheat. 78; 3 Sim. 659; 13 Ves. 84), but mortgagee or trust creditor is. 1 Story, Eq. § 426. The badges of fraud are the same as against creditors (2 Lomax, 453; Twyne's Case, 3 Co. 81), where such badges are enumerated. 1 Am. L. Cas. 96; 1 Story, Eq. § 426.

SEC. 4235. Subsequent purchaser with notice.— No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser, who had actual or legal notice thereof at the time of his purchase, unless it appears that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

G. S. ch. 41, § 2. This is the doctrine of notice, stated in preceding section, applied to subsequent purchasers, that such purchasers with notice, actual or legal, at time of purchase, is not protected unless grantee be privy to fraud. Cro. Jac. 270; 16 Johns. 189; 5 Binney, 109; 6 Watts, 429.

SEC. 4236. Conveyances with powers of revocation.— Every conveyance or charge of or upon any estate or interest in lands, containing any provision for the revocation, determination or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from such grantor, for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same is not expressly revoked, determined, or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

G. S. ch. 41, § 3. Reserving power of revocation is one of the badges in Twyne's Case, 3 Co. 81; but such power is to be distinguished from conditions. 2 Lomax, Dig. 423, 425.

SEC. 4237. Same — By grantee of power.— When a power to revoke a conveyance of any lands or the rents and profits thereof, and to reconvey the same, is given to any person other than the grantor in such conveyance, and such person thereafter conveys the same land, rents or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid, in the same manner and to the same extent as if the power of revocation was recited therein, and the intent to revoke the former conveyance expressly declared.

G. S. ch. 41, § 4.

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SECS. 4238-4243.] FRAUDULENT CONVEYANCES AGAINST CREDITORS.

SEC. 4238. **Same — Prematurely made.**— If a conveyance to a purchaser, under either of the two preceding sections, is made before the person making the same is entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation actually vests in such person, in the same manner and to the same extent as if then made.

G. S. ch. 41, § 5.

TITLE 3.

CONVEYANCES RELATIVE TO LANDS, GOODS AND CHATTELS, FRAUDULENT AS AGAINST CREDITORS.

This title is from 13 Eliz. ch. 5, A. D. 1571, intended to protect existing and subsequent creditors, and applied to lands and chattels, whereas the 27 Eliz. ch. 4, applied to lands alone, and intended to benefit subsequent purchasers only. Taken from Civil Law. Dig. 5, 8, 11, 42; 2 Bell's Com. 182.

CHATTELS.

SEC. 4239. **Chattels in trust for grantor.**— All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

G. S. ch. 41, § 14. 3 M. 364; 4 M. 533; 14 M. 205; 35 M. 196, 475; 25 M. 180.

SEC. 4240. **Chattels — Sale without delivery.**— Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same is accompanied by an immediate delivery, and followed by an actual and continued change of possession, of the things sold and assigned, shall be presumed to be fraudulent and void as against the creditors of the vendor or assignor, or subsequent purchasers in good faith, unless those claiming under such sale or assignment make it appear that the same was made in good faith, and without any intent to hinder, delay or defraud such creditors or purchasers.

G. S. ch. 41, § 15. 27 M. 533; 39 N. W. 28. Presumed to be fraudulent. 8 Wend. 376; 23 E. C. L. R. 130. Formerly it was fraudulent *per se*. 1 Cranch, 316; 2 T. R. 587. For learning on this subject see 2 B. & P. 59; 4 Taunt. 323; 1 M. & S. 251; 5 Taunt. 212; 7 Taunt. 149; 4 B. & C. 652; 9 Johns. 337; 1 Gall. 419; 5 S. & R. 275; 15 Mass. 244; 1 Pick. 288; 3 Cowen, 166; 10 S. & R. 419.

SEC. 4241. **Same — Creditors defined.**— The term "creditors," as used in the preceding section, includes all persons who are creditors of the vendor or assignor at any time while such goods and chattels remain in his possession, or under his control.

G. S. ch. 41, § 16. Intended to embrace all creditors; formerly it was otherwise. 5 Cranch, 154; 3 Johns. Ch. 499; 4 Johns. 536; 2 Bland, 26; 12 S. & R. 448.

SEC. 4242. **Same — Exceptions.**— Nothing contained in the two preceding sections shall apply to contracts of bottomry or respondentia, or assignments or hypothecations of vessels or goods at sea or in foreign ports, or without this state; *provided*, the assignee or mortgagee takes possession of such vessel or goods as soon as possible after the arrival thereof within this state.

G. S. ch. 41, § 17.

LANDS.

SEC. 4243. **Conveyance to defraud creditors.**— Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or of any rents or profits issuing therefrom, and every charge upon lands, or upon the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or other persons of their lawful actions, damages, forfeitures, debts,

or demands, and every bond or other evidence of debt given, actions commenced, order or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded, shall be void.

G. S. ch. 41, § 18. 3 M. 377; 3 M. 389; 12 M. 61; 19 M. 17; 22 M. 214, 247; 23 M. 242; 25 M. 159; 24 M. 173. This is 13 Eliz. ch. 5, A. D. 1571, as applied to lands, and was enacted to protect existing and subsequent creditors. 1 Am. L. Cas. 68; 8 Wheat. 229. All creditors (18 Johns. 425; 1 Am. L. Cas. 73-79; 23 E. C. L. R. 96; 3 B. & A. 362), suing *ex maleficio* or for tort and *ex contractu*, whether original or assignee. 2 Lomax, 445; Twyne's Case, 3 Rep. 82; 18 Johns. 425. Badges enumerated in Twyne's Case. The intent must exist and be concurred in. 2 Lomax, 419; 7 Pet. 393; Cro. Jac. 270; 16 Johns. 189; 5 Binney, 109; 6 Watts, 429.

SEC. 4244. Fraudulent intent — Consideration.—The question of fraudulent intent, in all cases arising under the provisions of this title, shall be deemed a question of fact, and not of law; and no conveyance or charge shall be adjudged fraudulent as against creditors, solely on the ground that it was not founded on a valuable consideration.

G. S. ch. 41, § 20. 6 M. 305; 19 M. 367; 27 M. 533. The statute 13 Eliz. ch. 5, left each case to determine whether the intent existed. The law formed the conclusion from the facts. 2 Ves. Sr. 1; 2 Ves. Jr. 272; 3 Johns. Ch. 516; 3 Dyer, 294. The question soon arose whether voluntary conveyance *per se* was such intent—a question of law. Opinions conflicted. 5 Ves. 384; 17 Eng. Ch. 345; 8 M. & W. 410; 23 E. C. L. 362; 11 Wheat. 199. In Reade v. Livingston, 3 Johns. Ch. 481, 500, Chancellor Kent held the true principle to be that voluntary conveyance *per se* is absolutely void as to existing creditors, but only *prima facie* fraudulent as to subsequent creditors. This section repudiates Reade v. Livingston and establishes the rule that voluntary conveyance is only *prima facie* evidence of fraud, and that there must be *mala fides* or fraud in fact, whether aimed at existing or subsequent creditors, thus placing existing and subsequent creditors on same footing. 20 Wall. 35; 1 Otto, 485; 1 Am. L. Cas. 68.

SEC. 4245. Purchaser without notice protected.—The provisions of this title shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it appears that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

G. S. ch. 41, § 21. 6 M. 305. This is common-law rule of purchaser for value without notice, meaning a complete purchaser—one who has paid purchase-money and taken conveyance before notice (3 P. Wms. 307; 2 Atk. 630; 1 Atk. 384; 3 Sug. Vend. 348; 2 Wh. & Tud. L. C. 163; 2 Ambl. 436; 1 Sch. & Lefr. 157; 7 Johns. Ch. 65), claiming under parties who had notice (14 Mass. 1296; 10 Me. 221), or with notice if one under whom he claims had no notice. 8 Pick. 329; 16 Mass. 406; 8 Johns. 137; 10 Pet. 177. This rule that the purchaser must be a complete purchaser, based upon the ground that the defense of purchaser without notice is a complete defense or no defense at all (Mitf. 215; 3 Atk. 304; 2 Ves. Jr. 454; 2 Wh. & Tud. L. C. 144), has been repudiated in several jurisdictions holding that purchaser will be protected to extent of his payments. *Doswell v. Buchanan*, 3 Leigh, 365.

This section would seem to adopt Chancellor Kent's view in *Murray v. Ballou*, 1 John. Ch. 574, that purchaser is not required to take notice of a record by a person under whom his title is not derived, or, in other words, that in searching for incumbrances a purchaser is not required to look beyond the date which exhibits the title of his grantor. 2 Leigh, 365; 14 Mass. 303; 2 Mason, 536; 23 Me. 165.

SEC. 4246. Heirs and successors.—Every conveyance, charge, instrument or proceeding, declared to be void, by the provisions of this and the two preceding titles, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives or assignees of such creditors or purchasers.

G. S. ch. 41, § 19.

SEC. 4247. Conveyance defined.—The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

G. S. ch. 41, § 22. 24 M. 173.

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SECS. 4248-4252.] VOLUNTARY ASSIGNMENTS FOR CREDITORS.

TITLE 4.

VOLUNTARY ASSIGNMENTS FOR CREDITORS.

SEC. 4248. **Requirements.**—Every conveyance or assignment made by a debtor or debtors of the whole or any part of their estate, real or personal, in trust, to an assignee or assignees, for the benefit of creditors, shall be void, unless the assignee or assignees therein named are residents and freeholders of this state, and unless such conveyance or assignment be in writing, subscribed by such debtor or debtors, and duly acknowledged before an officer authorized by law to take acknowledgment of deeds, and the certificate of such acknowledgment be endorsed thereon; and until such conveyance or assignment be filed in the office of the clerk of the district court in and for the county wherein such debtor or debtors reside, or wherein the business in reference to which the same is made, has been principally carried on.

1876, ch. 44, § 1: "An act to protect the creditors of assignors and to regulate the duties of assignees." Approved March 4, 1876. 22 M. 247; 23 M. 55, 242; 35 M. 96, 195, 248, 352, 475, 532, 294; 34 M. 418, 268, 483, 49, 284; 33 M. 414, 31, 230, 405, 413; 32 M. 73, 64; 31 M. 138, 246; 29 M. 270; 28 M. 119, 95; 27 M. 259; 36 M. 67, 306, 168, 365; 37 M. 83, 244, 249; 38 M. 403, 432, 541; 38 N. W. 701; 41 N. W. 249.

SEC. 4249. **Bond of assignee.**—Before any such assignee or assignees shall have power or authority to sell, dispose of, or convert to the purposes of the trust, any part of such estate, and not later than five days after the filing of the inventory, as provided for in section two of this act, he or they shall execute, and file with the clerk of the court where such assignment is filed, a good and sufficient bond to the state of Minnesota, to be approved by the judge of such district court, with two or more sureties, freeholders and residents of the state of Minnesota, in an amount at least double the value of the estate assigned,* as shown by such inventory, if made, or by the affidavit of the debtors, or one of them, if the bond be given before the inventory be made, conditioned on the faithful and just performance of all the duties of such assignee or assignees. And the judge may at any time thereafter, if he shall deem such bond insufficient in amount, or that the sureties are insufficient, require the assignee or assignees to give new or additional bonds, in his discretion.

1876, ch. 44, § 3, as amended 1877, ch. 67, § 1. Amendment below *, except the condition. 35 M. 341; 26 M. 143.

SEC. 4250. **Filing.**—The clerk of the court wherein any such assignment, inventory or bond shall be filed shall forthwith endorse thereon the day, hour and minute at which the same is filed, and make a record of such filing, and the day, hour and minute thereof, in a suitable book to be by him kept for that purpose.

1876, ch. 44, § 8. 33 M. 73.

SEC. 4251. **Notice of assignment.**—Upon taking possession of any estate so assigned, the assignee or assignees shall forthwith give notice of such assignment, by publication in one or more newspapers printed and published in the county where the same is made, if any; and if none, then in some newspaper printed and published in some adjoining county, if any; and if none, then in some newspaper printed and published at the city of St. Paul; and shall also forthwith send notice of such assignment by mail to each creditor named in the statement or inventory of the assignor, or of whom he or they shall have or receive information.

1876, ch. 44, § 4.

SEC. 4252. **Inventory.**—Every debtor or debtors, so making an assignment, shall, at the date thereof, or within ten days thereafter, make and file

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VOLUNTARY ASSIGNMENTS FOR CREDITORS. [SECS. 4253, 4254.]

with the clerk of the court aforesaid a just and true statement or inventory, under his oath or affirmation, containing —

First — A full and true account of all the creditors of such debtor or debtors.

Second — The place of residence of each creditor, if known to such debtor or debtors; and if not known, the fact to be so stated.

Third — The sum owing to each creditor, and the nature of such debt or demand, whether arising upon written security, account or otherwise.

Fourth — The true cause and consideration of all such indebtedness, in each case, and the place where such indebtedness arose.

Fifth — A statement of any existing judgment, mortgage, collateral or other security for the payment of any such debt.

Sixth — A full, true and complete inventory of such debtor or debtors' estate, both real and personal, in law or in equity, and the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate and each item thereof, to the best knowledge, information and belief of such debtor or debtors.

1876, ch. 44, § 2.

SEC. 4253. **Proof of claims — Order of payment.**— No claim or demand, except for debts owing to the United States or the state of Minnesota, or for taxes or assessments against the debtor or debtors, shall be paid in whole or in part, unless the same be first verified by the oath or affirmation of one of the creditors making such claim or demand, or in case of a corporation creditor, by some officer thereof. And after the payment, by the assignee or assignees, of the costs, charges and expenses of making and executing the assignment and executing the trust, all debts of the debtor or debtors shall be paid in the order and precedence following, that is to say:

First.— All debts owing to the United States, and all debts owing to the state of Minnesota, and all taxes and assessments levied and unpaid, shall be paid in full before the payment of any other debts.

Second.— All debts owing for the wages of servants, laborers, mechanics and clerks, for labor and services performed for the debtor or debtors, within three months next preceding the date of the assignment, shall next be paid in full, to the exclusion of all other indebtedness, if there shall be sufficient wherewith to pay the same in full; if not, they shall be paid *pro rata*, so far as they can be paid; but to entitle a creditor for wages to payment under this subdivision, the proof or verification of the claim must show the character of the labor or services, and that the same was performed within the time above mentioned.

Third.— All other debts of the debtor, properly claimed and verified, shall be paid in full, if there shall be sufficient left in the hands of the assignee or assignees wherewith to pay the same in full; if not, the moneys in the hands of the assignee or assignees applicable thereto shall be paid upon the same *pro rata*, so far as it will extend; *provided*, that no debts for which the creditor holds a mortgage, pledge or other security, shall be so paid until the creditor shall have first exhausted his security, or shall surrender and release the security to the assignee or assignees.

1876, ch. 44, § 5, as amended 1877, ch. 67, § 2. Amendment changed phraseology.

SEC. 4254. **Payment.**— At least twenty days before any such assignee or assignees shall make payment of any dividend or distribution of any such estate, he or they shall file with the clerk of the district court aforesaid a just and true statement, under his or their oath or affirmation, of all creditors who shall have filed with such assignee or assignees their claims or demands properly verified, with the amount and nature of their claims respectively; and as often thereafter as any creditor shall in like manner present his claim or demand, the assignee or assignees shall also file a similar statement thereof

with said clerk, and shall pay nothing on any said claim until the expiration of twenty days after filing said statement with the clerk.

1876, ch. 44, § 9.

SEC. 4255. Removal—Discharge of assignee.— All proceedings under this act shall be subject to the order and supervision of the judge of the district court aforesaid; and such judge may from time to time, in his discretion, on [the] petition of one or more of the creditors, by order, citation, attachment or otherwise, require any assignee or assignees to render accounts and file reports of his or their proceedings, and of the condition of such trust estate; and may order or decree distribution thereof.*

Removal.— And such judge may, in his discretion, for cause shown, remove any assignee or assignees, and appoint another or others instead, who shall give such bonds as the judge may, in view of the conditions and value of the estate, direct; and such order of removal and appointment shall in terms transfer to such new assignee or assignees all the trust estate, and shall operate as a full transfer and conveyance to such new assignee or assignees of all the trust estate, real, personal and mixed, and may be recorded in the deed records in the office of the register of deeds of any county wherein any real estate affected by the assignment may be situated. And such judge may by order, which may be enforced as upon proceedings for contempt, compel the assignee or assignees so removed to deliver all property, money, choses in action, book-accounts and vouchers, to the assignee or assignees so appointed, and to make, execute and deliver to such new assignee or assignees such deeds, assignments and transfers as such judge may deem proper, and to render a full account and report of all matters connected with such trust estate.

Discharge.— Whenever any assignee so removed shall have fully accounted for and turned over to the assignee or assignees appointed by the judge all the trust estate, and made full report of all his doings, and complied with all orders of the judge touching such estate, and, also, whenever an assignee has fully completed his trust, he may, by the order of the judge, be fully discharged from all further duties, liabilities and responsibilities connected with the trust.

Notice.— In either case he shall give notice by publication in some newspaper of the county, if there be one printed and published therein, if not, in a newspaper printed at the capital of the state, once in each week for at least three weeks, that he will apply to such judge for such discharge, at a time and place to be stated in such notice, which time shall be not more than three weeks after the last publication of the notice.

Discharge.— If, upon the hearing, the judge shall be satisfied that the assignee is entitled to be discharged, he shall make an order accordingly; or if, in the opinion of the judge, anything remains to be done by such assignee, he may require the performance thereof before making such order. Such order shall have the effect of discharging the assignee and his sureties from all further responsibility in respect to the trust; and such order shall not be refused on account of any failure on the part of the assignee to comply with the formal provisions of law where no loss or damage to any one shall have occurred through such failure.

Bankruptcy.— Whenever the trust estate shall have been taken out of the hands of the assignee by proceedings in bankruptcy in the federal court, the assignee may in like manner be discharged, upon showing that he has fully accounted with the assignee in bankruptcy, and turned over to him the whole of the trust estate.*

Assignment void, etc.— And whenever said trust estate shall have been, or shall be taken out of the hands of said assignee, by means of any legal proceedings or actions in any court or courts; and whenever said assignment shall have been declared void as to creditors or by reason of said proceedings, or from any cause, the further administration of said trust is or has been ren-

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dered impracticable, unadvisable or nugatory, said assignee shall, upon proper showing thereof, and upon such notice as shall be required by the court, be in like manner discharged, and the sureties on his official bond released.

1876, ch. 44, § 6, as amended 1877, ch. 67, § 3 (March 14); 1885, ch. 82 (February 13). Amendment of 1877 between ***, and amendment of 1885 below last *.

SEC. 4256. Fraudulent conveyances.— That in all cases of general assignments for the benefit of creditors, the assignee or assignees shall be considered as representing the rights and interests of the creditors of the debtor or debtors making the assignment, as against all transfers and conveyances of property which would be held to be fraudulent or void as to creditors; and shall have all the rights which such creditors would have to avoid such fraudulent conveyances and transfers.

1877, ch. 142: "An act vesting in assignees under general assignment the rights of the creditors as against all fraudulent conveyances made by the debtors." Approved March 2, 1877. 87 M. 84.

SEC. 4257. Suit on assignee's bond.— Whenever any such assignee or assignees shall omit or refuse to perform any decree or order made by any such judge pursuant to this act, or shall fail to do and perform any of his or their duties as such assignee or assignees, any creditor or creditors of such debtor or debtors may, upon leave of the court first had and obtained, proceed to prosecute the bond of such assignee or assignees, and apply the proceeds thereof in satisfaction of the debt or debts of such debtor or debtors.

1876, ch. 44, § 7. 35 M. 341.

SEC. 4258. Prior assignments.— That in all cases of assignment heretofore made, which have not been closed by final settlement, it shall be the duty of any assignee or assignees having any such trust estate in his or their hands, or under their control, to report to the judge of the district court where such assignee or assignees may reside, the situation and amount of such trust estate, and the creditors having claims against the same, with the amounts due to each, as far as the same have come to his or their knowledge, within thirty days after the taking effect of this act; and in case of any neglect to file such report, any creditor or person interested in such estate may, on filing a petition to that effect with the clerk of said court, obtain a citation to such assignee or assignees, to be served as in case of an original notice, requiring such assignee or assignees to appear before said judge, to show cause why such a report should not be filed; and on such hearing, the judge shall order such report, and shall require such assignee or assignees to give bond, with sureties, for the faithful performance of the trust, and shall fully investigate the proceedings of such assignee or assignees in the premises, and may summon such assignee or assignees, and make all such orders in the matter as may be proper and necessary to insure a faithful performance of the trust, and a speedy close of the same by a final distribution and settlement of the estate, as in case above provided.

1876, ch. 44, § 10. 32 M. 64; 28 M. 95; 36 M. 33.

SEC. 4259. Operate as conveyance, when.— No deed of assignment for the benefit of creditors whether under the general assignment law or the insolvent law of this state, and no order or decree of assignment under said insolvent law by any court, shall be valid or of any force or effect whatsoever as a conveyance of any land or of any estate or interest therein in this state until a copy of such deed, order or decree certified by the clerk or his deputy of the court wherein the original deed, order or decree is filed, shall be filed for record in the office of the register of deeds of the county wherein such land is situated.

Provided, that this act shall not apply to cases where deeds of assignments for the benefit of creditors have heretofore been made.

1887, ch. 206: "An act to provide for the recording in the office of registers of deeds, of certified copies of deeds or decrees of assignment for the benefit of creditors affecting real estate." Approved February 28, 1887.

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TITLE 5.

INSOLVENT'S ASSIGNMENT FOR CREDITORS.

SEC. 4260. **Authorized, when.**—Whenever any debtor shall have become insolvent, or garnishment shall have been made against any debtor, or property of any debtor shall have been levied upon by virtue of an attachment, execution or legal process issued against him for collection of money, he may make an assignment of all his unexempt property, for the equal benefit of all his *bona fide* creditors, who shall file releases of their demands against such debtor, as herein provided; such an assignment shall be made, acknowledged and filed, in accordance with and be governed by the laws of this state relating to assignments by debtors for the benefit of creditors, except as herein otherwise provided; and such assignment, if made within ten days after garnishment shall have been made against the assignor, or within ten days after property of such assignor shall have been levied upon by virtue of an attachment, execution or other legal process against him for collection of money, as aforesaid, shall operate to vacate every garnishment and levy then pending, and to discharge all property therefrom, upon qualification of the assignee or his successor, as provided by law, unless he shall, within five days thereafter, file in the office of the clerk of the court, where such assignment was filed, notice of his intention to retain all pending garnishments and levies; in which case the same shall inure to the benefit of the creditors under such assignment, and may be prosecuted by such assignee and his successors; provided, however, that such assignment shall not vacate or affect any levy made by virtue of an execution issued on a money judgment entered against such debtor on a complaint which was on file during at least twenty days next prior to entry of such judgment in the court in the county where the defendant resided meanwhile; and provided further, that the release of any debtor under this act shall not operate to discharge any other party liable as surety, guarantor or otherwise for the same debt.

1881, ch. 148, § 1, as amended 1885, ch. 73 (February 27); 1889, ch. 30 (April 23). Acts 1881, ch. 148, entitled "An act to prevent debtors from giving preference to creditors, and to secure the equal distribution of the property of debtors among their creditors, and for the release of debts against debtors." Approved March 7, 1881. In force from and after July 1, 1881.

SEC. 4261. **Preference prohibited.**—No assignment hereafter made for the benefit of such creditors shall give to any one creditor any preference over the claims of another creditor, except in cases expressly provided by law. If any insolvent debtor shall confess or suffer judgment to be procured in any court with intent that any one of his creditors shall obtain a preference over any other of his creditors, such insolvent debtor shall be deemed guilty of a misdemeanor, and punished by a fine, not exceeding five hundred dollars; and, in default of payment, shall be imprisoned in the county jail for a period not exceeding six months. The court may at any time, upon the filing of affidavits or other evidence satisfactory to the court, grant an order restraining such debtor from collecting any bills, notes, accounts or other property, or from disposing of, or in any manner interfering with the property of said estate, or may, by writ of *ne exeat* or by order, restrain said debtor from leaving the state until the further order of the court, or may require him at any time to appear and make full disclosures as to any disposition of property, or in relation to any other matter pertaining to said estate.

1881, ch. 148, § 3.

SEC. 4262. **Acts in contemplation of insolvency.**—Conveyances and payments made and securities given by any insolvent debtor, or a debtor in contemplation of insolvency within ninety days of making an assignment, as provided in section one of this act, with a view of giving a preference to any

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creditor upon a pre-existing debt, or to any persons under liability for such debtor over another, shall be void as to all creditors or persons receiving the same, who shall have reasonable cause to believe that such debtor was insolvent, and all such conveyances made and securities given at any time unaccompanied with a delivery or change of possession of the property to the grantee, unless the instrument containing the grant or conveyance shall have been duly filed or docketed before the commencement of such * ninety days, shall be void as a preference as to any creditor; and the assignee may, by action or other proper proceedings, have all such conveyances, payments and preferences annulled and adjudged void, and recover the property so conveyed, or the value thereof, and recover the payment so made, and convert all proceeds into money, as provided in this act; *provided*, that the provisions of this act shall not apply to any payment or satisfaction, in whole or in part, of a past-due debt made in the usual course of business, without any intent on the part of the creditor to evade the provisions of this act.

1881, ch. 148, § 4, as amended 1881, Ex. S. ch. 23 (November 22); 1889, ch. 30. Amendment of 1881 struck out sixty days at * and inserted four months. Amendment of 1889 struck out four months and inserted ninety days.

SEC. 4263. Receiver — Application for.— Whenever any insolvent debtor shall confess judgment, or do anything whereby any of his creditors shall obtain preference over any other of his creditors, or shall omit to do anything which he might lawfully do to prevent any of his creditors from obtaining preference over any other of his creditors, or shall not make an assignment under the first section of this act, within ten days after garnishment made against him or within ten days after levy made on any of his property by virtue of an attachment, execution or other legal process against him for collection of money, or shall conceal, remove, or dispose of any of his unexempt property with intent thereby to delay or defraud his creditors, then, or within sixty days thereafter, any one or more of his creditors having claims against him to the aggregate amount of at least two hundred dollars may petition the district court, or a judge thereof, setting forth facts constituting one or more of said cases, and asking that a receiver be appointed of all the unexempt property of such debtor, and for such other and further relief as may be proper.

Hearing — Appointment.— And said petition may be heard in any county designated by the judge; and upon notice of the time and place of such hearing given as the court or judge shall direct, to the debtor and any creditor about to be preferred, the court in term time, or the judge thereof, in vacation, shall proceed to hear and determine such petition summarily, and shall receive such evidence as may be pertinent, and if it shall appear to the court, or judge, that such insolvent debtor has confessed judgment, or has done anything whereby any of his creditors have obtained preference over any other of his creditors, or has omitted to do anything which he might have lawfully done to prevent any of his creditors obtaining preference over any other of his creditors, or that he has not made an assignment under the first section of this act, within ten days after garnishment made against him, or within ten days after levy made on any of his property by virtue of an attachment, execution, or other legal process against him for collection of money, or that he has concealed, removed, or disposed of any of his unexempt property with intent thereby to delay or defraud his creditors, then the court or judge shall appoint a receiver, who shall have power and authority to, and who shall take possession of all the property of such debtor, not exempt by law, including all property concealed, removed, or otherwise disposed of by such debtor in violation of any provision of this act, and also all property then under garnishment, attachment or levy, except such as was levied upon under an execution issued upon a judgment against such debtor entered on a complaint which was on file in the court in the county where the debtor then resided during the period of at least twenty days next before entry of such

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judgment; and such receiver shall have power and authority to, and he shall, within four months from his appointment, unless the court or judge shall otherwise direct and shall allow further time, convert said property into money and distribute the net proceeds thereof ratably and in proportion to the amount of their several demands among the creditors of such debtor who shall come in and make due proof of their respective demands within such time and in such manner as the court or judge shall direct, and who shall, in consideration of the benefit of the provisions of this act, execute and file releases of their respective demands against such debtor as herein provided.

Schedule.— And the court or judge shall order the debtor to make, verify and file in the court a schedule of all his debts, showing to whom due, when payable, and the consideration of each, and a schedule of all his property.

Further orders.— The court in term time, and the judge thereof during vacation, may also make such further and other orders as may be necessary or proper to carry into full effect the provisions of this act, and such orders and applications therefor may be made, served and enforced on Sunday when necessary to protect the rights of creditors or others hereunder.

1881, ch. 148, § 2, as amended 1889, ch. 30, § 2 (April 23).

SEC. 4264. Justice attachment discharged.— Whenever, at the time of the appointment of a receiver under sections one or two of this act, the property, or any part thereof, of said insolvent debtor is under attachment, levy or garnishment by virtue of any writ or process issued by any justice of the peace of this state, said attachment, levy or garnishment shall be dissolved in the same manner as when said attachment, levy or garnishment is by virtue of any writ or process issued by any court of record of this state, and the plaintiff therein and the officer making the same shall thereafter have the same rights, and no greater rights, by virtue thereof, and the attachment, levy or garnishment shall thereafter be proceeded with in the same manner as though the same had been made by virtue of a writ or process issued out of a court of record of this state.

Exception.— *Provided, however,* that section one shall not apply to any case when an execution has been issued upon a judgment in an action wherein the complaint has been filed with the justice of the peace twenty days prior to the date of the levy upon said execution.

1885, ch. 70. An act to amend ch. 148, acts 1881, by adding thereto the above section. Approved March 9, 1885.

SEC. 4265. Vacancy — Removal.— In case of the death of any assignee or receiver, the court may appoint another to fill the vacancy, and the court may, for any proper cause, remove such assignee or receiver, and appoint another in his stead. * And upon petition of a majority in number and amount of the creditors, it shall be the duty of the court to remove any assignee or receiver appointed hereunder, and if he is shown, and the court believes him to be a proper person, the court shall appoint the party specified in the petition, otherwise the court shall appoint some other suitable person as assignee or receiver.

1881, ch. 148, § 9, as amended 1889, ch. 30, § 6. Amendment below *.

SEC. 4266. Notice — Appointment — File claims.— Such assignee or receiver shall, within ten days after his appointment, publish a notice in a daily newspaper published at the capital of this state, and also in a daily or weekly newspaper in the county where the debtor, debtors or any of them reside, if any is there published, and by sending notices through the mail to such creditors whose residences are known to the assignee or receiver of his appointment, and all creditors claiming to obtain the benefits of this act shall file with such assignee or receiver their claims, within twenty days after such publication.

1881, ch. 148, § 11.

SEC. 4267. **Disallowance of claim — Appeal.**— Any creditor whose claim is disallowed in whole or in part by any assignee or receiver appointed or selected under this act, or under the provisions of the assignment laws of this state regarding the assignment of debtors, may appeal from such disallowance to the district court, and there have such claims tried as other civil actions. The assignee shall, within ten days after his disallowance of any claim, in whole or in part, give written notice to such creditor of such disallowance, which notice may be served personally or by mail, as in other cases, on such creditor, his agent or attorney, and thereupon such creditor may appeal from such disallowance within ten days after the service upon him of such notice of disallowance made by the assignee, and which notice may be served on such assignee personally or by mail, as aforesaid, and in case such service is by mail, the time within which such notice of appeal is to be given shall be within twenty days from the time of such notice of disallowance.

1881, ch. 148, § 8.

SEC. 4268. **Release of creditors.**— No creditor of any insolvent debtor shall receive any benefit under the provisions of this act, or any payment of any share of the proceeds of the debtor's estate unless he shall have first filed with the clerk of the district court, in consideration of the benefits of the provisions of this act, a release to the debtor of all claims other than such as may be paid under the provisions of this act, for the benefit of such debtor, and thereupon the court or judge may direct that judgment be entered, discharging such debtor from all claims or debts held by creditors, who shall have filed such releases.

Exception.— * *Provided, however,* that when any creditor of such insolvent debtor who has made an assignment of his property hereunder, or of whose property a receiver has been appointed hereunder, shall petition to the court or judge, before entry of the final order for distribution of the insolvent's estate among his creditors as herein provided, setting forth that such debtor has willfully sworn falsely in relation to any specified material fact, in any affidavit or upon any examination under this act, or that he has concealed from the assignee or receiver any of his property, or evidence thereof, or that he has destroyed or falsified any of his account books, or other evidences of his property, or has been privy to any such doings, with intent to delay or defraud his creditors, or that he has removed or has connived at the removal of any of his property, or evidences thereof, from this state, with intent to defeat or delay the operation of this act, or that he has given, or permitted, any preference, contrary to the provisions of this act, or that having knowledge that any person has presented a false or fictitious demand against his estate, he has not disclosed the same to the assignee or receiver within thirty days thereafter, or that he has not kept books of account or records from which his true condition can be ascertained, or that he has, within six months prior to his assignment or to the appointment of the receiver, concealed, removed or disposed of all or some part of his property with intent thereby to delay or defraud his creditors, then the court or judge shall require the insolvent debtor to appear before him at a time and place designated for that purpose, and, after notice to such complaining creditor of the time and place of such hearing in such manner as the court or judge may direct, the court, or judge shall proceed upon such petition summarily, and if the allegations thereof shall be controverted or denied, shall hear such evidence as may be pertinent, and after said hearing the court or judge may, in his discretion, order and direct that all of the debtor's property not exempt by law, be distributed among his creditors, as hereinbefore provided, without their filing releases as aforesaid; and creditors may in like manner be examined with respect to the validity of their demands.

1881, ch. 148, § 10, as amended 1889, ch. 30, § 7. Amendment below *.

SEC. 4269. **Distribution.**— After the payment of costs, disbursements and expenses as herein provided, debts due the United States, the state of

Minnesota, all taxes or assignments levied and unpaid, expenses of the assignment and executing the trust, the assignee or receiver shall pay in full, if sufficient then remains for that purpose, the claims, duly proven, of all servants, clerks or laborers, for personal services or wages owing from said debtor, for services performed for the three months preceding said assignment, not exceeding fifty dollars in each case, and the balance of said estate shall then be equally distributed among the general creditors thereof under the direction of the court.

1881, ch. 148, § 12, as amended 1889, ch. 30, § 9, by inserting "disbursements and expenses" after word costs.

SEC. 4270. Copartnership assignments.— All assignments under the provisions of this act made by any copartnership of which a minor is a member, or of which there shall be a special partner or partners shall be valid if executed by the adult or general partner or partners, and such assignment shall pass to the assignee all the unexempt individual property of the adult or general partner or partners and all of the co-partnership property of such firm, and the court may appoint receivers of such co-partnerships in the manner herein provided, and all the property of such co-partnership and the individual property of the adult or general partner or partners shall pass to such receiver in like manner as to an assignee provided for in this act.

1889, ch. 30, § 8, which added this section as § 13.

SEC. 4271. Complainant.— All actions and proceedings to be commenced under the provisions of this act may be commenced and prosecuted in the name of the assignee or receiver appointed as herein provided, and all laws of the state of a general nature, applicable to receivers and assignments, and not in conflict with the provisions of this act, shall apply to assignees and receivers appointed hereunder, as the case may require.

1881, ch. 148, § 7.

SEC. 4272. Venue — Parties.— All actions or proceedings, brought under the provisions of this chapter, shall be commenced in the county where the debtor, debtors or any one of them resides, if a resident of this state, and if not a resident of this state, such action or proceeding may be brought in any county which plaintiff shall designate in his complaint or where such debtors, or any of them, has property subject to attachment or levy. The court or judge may at any time during the pendency of the petition under the second¹ section of this act allow new parties to come in and be joined in such petition. No such petition shall be dismissed except on order to show cause, duly served upon all the creditors either personally or by mail, or by publication, as the court shall direct.

1881, ch. 148, § 5, as amended 1889, ch. 30, § 4. ¹Sec. 4263, *ante*.

SEC. 4273. Costs.— Costs in cases upon which attachments or levies are made which are dissolved under the provisions of this act, and a reasonable fee not exceeding twenty-five dollars (\$25), in the discretion of the court, and disbursements to an attorney for creditors petitioning under this act, shall be preferred and be paid first, by the receiver appointed hereunder.

1881, ch. 148, § 6, as amended 1889, ch. 30, § 5. Amendment inserted "and disbursements."

SEC. 4274. Fees.— That the fees to be allowed to the assignees or receivers hereunder shall not, in ordinary cases, exceed ten per cent. upon the amount received by them up to one thousand dollars; five per cent. upon the amount in excess of one thousand dollars up to five thousand dollars; and two per cent. upon the amount in excess of five thousand dollars; and the allowance for attorneys' fees shall not exceed one hundred and fifty dollars, where the gross proceeds of the estate do not exceed three thousand dollars, and where they do exceed three thousand dollars, or in extraordinary cases, involving unusual litigation, the fees of the assignees or receivers, as well as of the attorneys, shall be fixed by the court at the reasonable value of their services.

1889, ch. 30, § 8, which added this section as § 12.